

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TESTING TECHNOLOGIES, INC. and MG PREP, INC., Plaintiffs, v. MO MEDIA, LLC, PAUL OWENS, and JOHN DOES 1-10, Defendants.	ECF Civil Action No. 07 Civ 7360
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REPLY DECLARATION OF PAUL OWENS

EXHIBIT B

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CAUSE NO. 48147

PAUL OWENS,
Plaintiff,

VS.

**SEAN SELINGER and TESTING
TECHNOLOGIES, INC.,
Defendants.**

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IN THE DISTRICT COURT OF

HARDIN COUNTY TEXAS

88th JUDICIAL DISTRICT

**PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION**

PAUL OWENS ("Plaintiff"), files this Second Amended Original Petition complaining of and against SEAN SELINGER and TESTING TECHNOLOGIES, INC. ("Defendants"), and for cause of action would respectfully show unto the Court and Jury the following:

### I. Discovery Level

Plaintiff requests that this case be assigned to Level 3 for discovery.

## II. Parties

Plaintiff is a resident of Hardin County, Texas.

Defendant SEAN SELINGER is an individual residing in Connecticut and may be served at his residence located at 30 Spoonwood Road, Wilton, CT 06897.

Defendant TESTING TECHNOLOGIES, INC. is a corporation organized under the laws of Connecticut and can be served by serving it's registered agent: Sean Selinger, 30 Spoonwood Road, Wilton, CT 06897.

### III. Venue and Jurisdiction

Venue is proper in Hardin County, Texas because the act or acts giving rise to the claims occurred in Hardin County, Texas and Plaintiff resides in Hardin County, Texas.

See Tex. Civ. Prac. & Rem. Code Ann. § 15.017.

Further, Plaintiff now pleads that the amount in controversy in the case does not exceed \$75,000.00.

#### **IV. Facts**

Plaintiff would show that he was the registrant of the website testprepreview.com at various times between 2004 and 2006. Testprepreview is a website that offers free test preparation materials for many of the standardized tests given around the country for entrance into graduate schools, colleges, etc. Defendant Selinger, individually and on behalf of his company, Testing Technologies, Inc., has accused Plaintiff of various criminal acts and fraud related to Defendants' beliefs regarding operation of the website. Prior to the libelous and slanderous communications complained of in this action, Plaintiff enjoyed a reputation of honesty, stability, and trustworthiness in the business community and in his community. Prior to the time of the libelous and slanderous statements by Defendants, Plaintiff has never been suspected or accused of any criminal conduct, or any unethical act, and has had a reputation of being honest and trustworthy.

Plaintiff would show that Defendant accused Plaintiff of various criminal acts in an effort to destroy Plaintiff and his business. As a result of the actions of Defendant, Plaintiff has been damaged. Plaintiff has also suffered severe emotional distress, humiliation, embarrassment, mental anguish and loss of reputation as a result of Defendants' actions and will continue to suffer in the reasonably foreseeable future.

Additionally, to in furtherance of its plan to damage Plaintiff's business, Defendant has made threats and attempted to extort money from Plaintiff.

#### **V. Defamation**

At all times, the statements that Plaintiff was a criminal were false, libelous and slanderous, and have resulted in damage to Plaintiff's business reputation, as well as his

personal reputation. Upon information and belief, Defendants have disseminated these defamatory remarks to third parties.

#### **VI. Defamation Per Se**

Defendant Selinger's statements, individually and as an officer of Defendant Testing Technologies, were libelous and slanderous per se because they had a tendency to injure the Plaintiff in his profession and accused him of a crime.

#### **VII. Malice**

Furthermore, upon information and belief, Plaintiff believes that the Defendants maliciously made the statements complained of for the reason that they were made with an entire want of care, with recklessness and with conscious indifference to the rights of the Plaintiff, and that the statements were made with reckless and heedless disregard for the truth or falsity of the statements and had no factual basis. Statements of libel and slander in such a matter constitutes malice on the part of the Defendants.

#### **VIII. Damages**

As a direct and proximate result of the Defendants' statements, which were libelous, libelous per se, slanderous and slanderous per se, Plaintiff has suffered general damages to his reputation, past and future, as well as mental anguish, past and future, in a sum not to exceed \$75,000.00.

#### **IX. Intentional Infliction of Emotional Distress.**

The conduct of Defendants constituted intentional infliction of emotional distress, an intentional tort. This conduct proximately caused damage and harm to Plaintiff in the past and in reasonable probability will cause such damage in the future. These damages include, but are not limited to:

- a. Mental anguish.
- b. Lost wages and earning capacity and business opportunities.

**X. Prejudgment Interest**

Plaintiff is entitled to prejudgment interest on his damages, as provided by law.

**XI. Jury Demand**

Plaintiff respectfully requests a trial by jury on all issues herein.

**XII. Request for Disclosure**

Under the authority of Texas Rule of Civil Procedure 194, Plaintiff requests the Defendants disclose, with 50 days for the service of this Petition and request, the information or material described in Rule 194.2(a)-(k).

**XIII. Prayer**

Plaintiff requests and prays that Defendants be cited to appear and answer, and that on final trial Plaintiff has judgment against Defendants in a sum in excess of the minimum jurisdictional limits of the Court; prejudgment and postjudgment interest as provided by law; costs of Court; actual damages, and such other and further relief to which Plaintiff may be justly entitled, at law or in equity, special and general.

Respectfully submitted,

ROEBUCK & THOMAS, PLLC

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that a true and correct copy of the above and foregoing document has been furnished to the following Parties/Interested Persons/Counsel of record by depositing same into the United States Mail, postage prepaid, and/or by hand delivery, and/or by facsimile, and/or by electronic mail, on January 21, 2008.

Michael Walzel  
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Jeffrey T. Roebuck